
Judiciary Committee

HB 1302

Title: An act relating to limitations on asbestos-related liabilities relating to certain mergers or consolidations occurring before 1972.

Brief Description: Creating provisions relating to asbestos liability.

Sponsors: Representatives Hunt, Rodne, Williams and Kirby.

Brief Summary of Bill

- Limits a successor corporation's liability for asbestos-related claims to an amount equal to the predecessor corporation's adjusted total gross assets; and
- Applies to corporations that became successor corporations before January 1, 1972.

Hearing Date: 2/2/07

Staff: Trudes Tango (786-7384).

Background:

Generally, a corporation that purchases the assets of another corporation is not liable for the debts and liabilities of the selling corporation. One exception to that rule is if there has been a merger between the corporations. The predecessor corporation ceases to exist, and the surviving successor corporation has all liabilities of the predecessor.

Since the 1970s, thousands of asbestos-related injury claims have been filed in courts across the nation. Recently, a few states have adopted laws addressing a successor corporation's liability for asbestos-related injuries caused by the predecessor corporation's products. The American Legislative Exchange Council has drafted model legislation regarding successor asbestos-related liability. The model legislation limits the total financial liability of a successor corporation to an amount equal to the predecessor's total gross assets.

Summary of Bill:

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

A corporation that assumed or incurred asbestos-related liabilities due to a merger or consolidation with a predecessor corporation on or before January 1, 1972 has limited asbestos-related liabilities. The limited liability does not apply if the successor corporation, after the merger or consolidation, continued in the business of mining, selling, distributing, removing, or installing asbestos-containing products which were substantially the same as the predecessor's products.

The cumulative successor asbestos-related liabilities of a corporation are limited to the fair market value of the predecessor corporation's total gross assets. The fair market value is determined at the time the corporations merged or consolidated and includes an annual adjustment based on the prime rate of each year after merger or consolidation, plus one percent.

Once the limit is reached, the successor corporation does not have any responsibility for successor asbestos-related liabilities in excess of that limit.

A corporation may establish the fair market value of total gross assets through any method reasonable under the circumstances. The annual adjustment of the fair market value of total gross assets continues until the date the adjusted value is exceeded by the cumulative amounts of successor asbestos-related liabilities already paid or committed to be paid by or on behalf of the successor corporation or a predecessor.

If the predecessor corporation had assumed or incurred successor asbestos-related liabilities in connection with a prior merger with a prior predecessor, the fair market value of the total gross assets of the prior predecessor shall be the limitation of liability of the current successor corporation.

The limitation on liability does not apply to: (a) workers compensation benefits paid under the state workers' compensation act; (b) claims against a corporation that are not asbestos-related claims; (c) insurance corporations; and (d) obligations under the National Labor Relations Act or under any collective bargaining agreement.

The provisions of the bill apply to all causes of action commenced on or after the effective date of the act, regardless of when the action arose.

"Successor asbestos-related liabilities" includes liabilities that, after the merger or consolidation, were paid by the predecessor or successor in connection with settlements, judgments, or other discharges in this state or another jurisdiction.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill contains an emergency clause and takes effect immediately.